IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.582/04
IN
SUIT NO.1199/2001

Siraz Abdul Hussein
Contractors & ors. .. Plaintiffs

Vs.

Mohamed Farid Abdulla Saudagar .. Defendants

And

The Court Receiver
High Court, Bombay .. Respondent

WITH

CHAMBER SUMMONS NO.801/04
IN
SUIT NO.1199/2001

Siraz Abdul Hussein
Contractors & ors. .. Plaintiffs

Vs.

Mohamed Farid Abdulla Saudagar .. Defendants

And

The Court Receiver
High Court, Bombay .. Respondent

Mr.S.W.Kulkarni for the plaintiffs

Mr.P.N.Patwardhan for the respondents/defendants

Mr.Mungekar, Representative of Court Receiver present

**CORAM : S.U.KAMDAR, J**

**DATED : 20TH APRIL 2005**

P.C.:

1. The present two chamber summons are taken out challenging the order passed by the Court Receiver, High Court, Mumbai dt.16.1.04 fixing the royalty amount of Rs.7500 in respect of premises which is admeasuring about 873 sq.ft. being one bed room, lobby passage situated at Junction of Maratha Mandir and Morland Road, Byculla, Mumbai.

2. Before the Court Receiver a valuer was appointed who can by his report dt. 1.4.03 suggested a fair and reasonable royalty amount in respect of said property at Rs.17,000/- p.m. However, Court Receiver after taking into consideration the so-called factors has fixed the amount of royalty at Rs.7,500/- p.m. as reasonable. By this Chamber Summons No.801 of 2004 taken out by plaintiff he seeks enhancement of Royalty from Rs.7,500/- to Rs.20,500/-. On the other hand the defendants in the chamber summons

taken out by them being Chamber Summons No. 582 of 2004 seeks reduction in royalty amount from Rs.7,500/- to Rs.1000 or Rs.1200/- p.m.

3. The learned counsel for the defendants has contended that the said royalty amount fixed by the court receiver is excessive and the same should be reduced. According to the learned counsel for the defendants should not charge market value of the rent. In support of his aforesaid contention relies upon the Judgment of the learned single Judge of this court in the case of Pradeep C.Mody Vs. Shashikant C.Mody reported in AIR 1998 (Bom) Page 351. and contends that the amount fixed by the Court Receiver ought to be reasonable and fair and court receiver should not be profiteering from the amount fixed by him. He further contends that the said royalty amount should be based upon a standard rent formula.

4. On the other hand the learned counsel for the plaintiffs has contended that the court receiver has given no reasons in reducing the amount which was proposed by the Architect of

Rs.17,500/-. It has been contended that the Royalty amount must be fixed on the basis of reasonable return as person who is in possession is continued to be in possession during the pendency of the suit and if the the plaintiff succeeds in the suit then said person is liable to make payment for his user occupation and possession of the premises during the pendency of the suit as and by way of means profit which is the amount of reasonable market rent which property can fetch and not the amount of standard rent as claimed by the defendants. In my judgement in the case of Majid Ahmed Oomerbhoy Vs. Rashid Sattar Oomerbhoy and Ors. and The Court Receiver, High Court, Bombay in Chamber Summons No.1336 of 2003 in Suit No.4913 of 2000 with Chamber Summons No.1488 of 2003 in Suit No.4913 of 2000. I have considered the aforesaid aspects in detail. I have also considered the Judgment of the learned single Judge in the case of Pradeep C.Mody (supra) on which reliance has been placed by the learned counsel for the defendant. The aforesaid Judgment in the case of Pradeep C.Mody has already been distinguished by the Division Bench and it is held that the Receiver in

that case was appointed of tenancy rights and therefore it must confine to the facts of that case.

5. The learned counsel for the defendant contended that he is in possession from 1991 whereas Suit is filed in 2001 by the plaintiffs. He has contended that by virtue of long possession his right and entitlement as user and occupier of the said premises is established. However, he is not able to spell out what title he is claiming in respect of the said premises. In my opinion even if he is in possession from 1991 the characteristic of his occupation of the said premises is nothing but that of a trespasser. In my opinion the defendant are liable to make payment of market rent to the Court Receiver in respect of their occupation as Agent of the said premises. If the plaintiff succeeds in the suit plaintiff will be entitled of the said amount as a means of profit due unlawful denial of right of user of the said premiss by the defendant herein. I am not inclined to accept the contention of the learned counsel for the defendant that amount fixed should be so

reasonable that court receiver should not be profiteering. In the present case thee is no question of court receiver profiteering from the amount. Such deposited amount is to the credit of the suit and subject to the final outcome of the proceedings.

6. In the present case, adhoc royalty was fixed by the court receiver at Rs. 2,500/- p.m. and thereafter the same is enhanced by the impugned order to Rs.7,500 as final royalty amount. The defendants challenged the said royalty by filing the present Chamber Summons No.582 of 2004 and an interim order was passed on 7.4.04 directing the defendant to deposit a sum of Rs.25000 by 27.4.04 as an ad-hoc amount. By the said order the learned single Judge further directed that if such deposit is made the court receiver should not take coercive steps against defendant.

7. Taking benefit of the said order dt.17.4.04 defendant has not been paying the final royalty amount fixed by the Court Receiver though there is no stay of the same and has continued to pay only

ad-hoc royalty amount. Defendants are in arrears of the royalty charges. Taking overall view of the matter I am of the opinion that the court Receiver, High Court ought to have fixed royalty amount at higher rate than Rs.7500. Looking at the position and situation of the said property and looking at the valuation report I fix the royalty amount at Rs.10000 p.m. as final royalty.

8. The defendant are accordingly directed to make payment of final royalty @ Rs.10000 p.m. from the date of his possession till date on or before 30.6.05. All the arrears will be paid by defendant by the said time. If he fails to make payment of the said arrears amount on or before 30.6.05 the receiver shall discontinue his agency and take possession of the said premises from the defendants herein. The defendants are also directed to make payment of the said final royalty amount @ Rs.10000 from 1.5.05 regularly and the arrears to be paid by 30.6.05. Both chamber summons disposed of accordingly. No order as to costs.